

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AUTO PARK, INC. d/b/a  
DAILY PARK

and

TEAMSTERS AUTOMOTIVE EMPLOYEES,  
LOCAL UNION NO. 665, a/w  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN  
AND HELPERS OF AMERICA, AFL--CIO

Cases 32--CA--10966,  
32--CA--11527,  
(formerly 20--CA--23667), and  
32--CA--11628

*May 30, 1991*  
DECISION AND ORDER

*By Chairman Stephens and Members Cracraft and Raudabaugh*  
Upon charges filed by the Union February 22, 1990, October 18, 1990, and

January 28, 1991, the General Counsel of the National Labor Relations Board issued complaints <sup>1</sup> against Auto Park, Inc. d/b/a Daily Park, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges and complaints, the Respondent has failed to file an answer to either complaint.

On March 18, 1991, the General Counsel filed a Motion for Summary Judgment. On March 21, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On April 11, 1991, the Board issued a Supplemental Notice to Show

<sup>1</sup> The charges in Cases 32--CA--10966 and 32--CA--11527 (formerly Case 20--CA--23667) were consolidated in a complaint that issued on January 14, 1991. The complaint in Case 32--CA--11628 issued separately, on February 20, 1991, and was later consolidated with the other proceedings.

Cause.<sup>2</sup> The Respondent filed no response to either notice. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

#### Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaints state that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board." Further, the General Counsel gave written notice to the Respondent, with consequence for its failure to file an answer.

In the absence of good cause being shown for the failure to file timely answers, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

#### Findings of Fact

##### I. Jurisdiction

The Respondent, a California corporation with an office and place of business in San Jose, California, has engaged in the operation of parking lots on a retail basis. During the past 12 months, in the course and conduct of its business operations, the Respondent derived gross revenues in excess of \$500,000 and purchased and received goods or services valued in excess of \$5000 which originated outside of California. We find that the Respondent is

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<sup>2</sup> It appears that the original Notice to Show Cause may not have been mailed to the Respondent's correct address.

an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. Alleged Unfair Labor Practices

The following employees of the Respondent constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by the Respondent in San Francisco and San Mateo Counties in the following classifications: washing, polishing, lubrication, rent-car service, vehicle parking, cashiers, attendants, coin box checkers, non-attendant parking lot checkers, parking ticket auditors and other employees performing incidental duties; excluding office clerical employees, guards, and supervisors as defined in the Act.

About June 27, 1989, the Respondent became the successor to Daily Park, an employer with which the Union then had a 9(a) bargaining relationship, and thereupon recognized the Union as the 9(a) representative of employees in the unit described above. At all times since June 27, 1989, the Union has been the exclusive representative of employees in the unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

About June 28, 1989, the Respondent executed and became bound individually, with the Union, to an industry collective-bargaining agreement (the 1986 agreement), which was effective by its terms from December 1, 1986, to November 30, 1989. About June 28, 1989, the Respondent entered into a "me too" agreement with the Union, by which the Respondent agreed, inter alia, to enter on an individual basis into the industry successor agreement (the 1989 agreement) to the 1986 agreement, retroactive to November 30, 1989.

Pursuant to both agreements, the Respondent was required to pay certain wage rates to unit employees; to make certain fringe benefit, health and welfare, and pension contributions on behalf of unit employees; and to check off and remit unit employees' union dues to the Union, on authorization by the

employees. Since about June 28, 1989, and continuing to the present, the Respondent has failed and refused to pay the contractually required wage rates and to make the contractually required benefit contributions. Since about August 1, 1990,<sup>3</sup> the Respondent has checked off dues from the wages of employees who authorized such deductions, but has failed and refused to remit the checked-off dues to the Union. The Respondent engaged in the foregoing conduct without first informing the Union or offering it an opportunity to bargain with respect to its conduct or the effects of that conduct, and without the Union's agreement.

About September 7, 1990, the Union requested that the Respondent provide it with the payroll records for each employee employed after May 1, 1990, copies of all time records or work schedules for all employees performing unit work after May 1, 1990, and the names of all employees performing unit work after May 1, 1990. The information requested is necessary for and relevant to the Union's performance of its function as the bargaining representative of unit employees. About December 6, 1990, the Respondent provided portions of the requested information. Since that date, the Respondent has failed and refused to furnish the Union the remaining portions of the information. We find that the above refusals constitute unlawful refusals to bargain in violation of Section 8(a)(5) and (1) of the Act.

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<sup>3</sup> The complaint in Case 32--CA--11628 originally alleged that the Respondent has failed to remit checked-off dues to the Union since on or about August 1, 1991. On May 6, 1991, the General Counsel filed a motion to correct the obvious typographical error in the complaint, which should have alleged a failure to remit dues beginning in August 1990. We grant the motion, which is unopposed.

## Conclusions of Law

By failing to pay the contractually required wage rates and to make the contractually required benefit contributions, and by failing to remit checked-off dues to the Union and to furnish it all the information it requested, the Respondent has refused to bargain with the Union as the exclusive representative of its employees in the unit, and thus has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has unlawfully failed to pay the contractually required wage rates and to make the contractually mandated fringe benefit contributions, we shall order it to do so, and to make its present and former unit employees whole, with interest, for any losses they may have sustained as a result of the Respondent's unlawful actions, in the manner provided for in Ogle Protection Service, 183 NLRB 682 (1970), and New Horizons for the Retarded, 283 NLRB 1173 (1987). With regard to fringe benefits, we shall require the Respondent to remit all payments it owes to fringe benefit funds and to reimburse employees for any expenses they may have incurred because of the Respondent's failure to make those payments, in the manner prescribed in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). Amounts to be paid into benefit funds shall be determined in the manner set forth in Merryweather Optical Co., 240 NLRB 1213 (1979). Amounts paid to employees shall be with interest as provided in New Horizons, supra. We shall also require the Respondent to remit to the

Union all dues that it withheld from the wages of unit employees, with interest as provided in New Horizons, supra.

Finally, we shall require to the Respondent to provide the information that has been requested by the Union but that the Respondent has failed and refused to provide.

ORDER

The National Labor Relations Board orders that the Respondent, Auto Park, Inc. d/b/a Daily Park, San Jose, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to adhere to the terms of its collective-bargaining agreements with Teamsters Automotive Employees, Local Union No. 665, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO, specifically by failing and refusing to pay contractually mandated wage rates, to remit fringe benefit contributions to the appropriate union trust funds, or to remit to the Union dues that have been withheld from the wages of unit employees.

(b) Failing and refusing to provide information to the Union that is necessary for, and relevant to, the Union's performance of its function as the exclusive bargaining representative of its employees in the following appropriate unit:

All employees employed by the Respondent in San Francisco and San Mateo Counties in the following classifications: washing, polishing, lubrication, rent-car service, vehicle parking, cashiers, attendants, coin box checkers, non-attendant parking lot checkers, parking ticket auditors and other employees performing incidental duties; excluding office clerical employees, guards, and supervisors as defined in the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Adhere to the terms of its collective-bargaining agreements with the Union, specifically by paying the contractually required wage rates, by making all contractually mandated fringe benefit payments, and by remitting checked-off union dues to the Union.

(b) On request, and to the extent the Respondent has not already done so, provide the Union with information that is relevant and necessary to its role as exclusive collective-bargaining representative of employees in the unit, and specifically with the payroll records of each employee employed after May 1, 1990; copies of all time records or work schedules for all employees performing unit work after May 1, 1990; and the names of all employees performing unit work after May 1, 1990.

(c) Make whole all present and former unit employees for any losses they may have suffered as a result of the Respondent's failure to adhere to the terms of the collective-bargaining agreements, in the manner set forth in the remedy section of this decision.

(d) Remit to the Union all dues of unit employees that have been withheld from their wages since August 1, 1990, pursuant to the terms of the collective-bargaining agreements, in the manner set forth in the remedy section of this decision.

(e) Remit all payments owed to the fringe benefit funds.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, trust fund statements, and all other documents or records necessary to analyze the amount of trust fund payments and backpay due under the terms of this Order.

(g) Post at its various facilities copies of the attached notice marked ''Appendix.'' <sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. May 30, 1991

James M. Stephens, Chairman

Mary Miller Cracraft, Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''



APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to adhere to the terms of our collective-bargaining agreements with Teamsters Automotive Employees, Local Union No. 665, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL--CIO.

WE WILL NOT fail and refuse to provide information to the Union that is necessary for, and relevant to, the Union's performance of its function as the exclusive bargaining representative of our employees in the following appropriate bargaining unit:

All employees employed by us in San Francisco and San Mateo Counties in the following classifications: washing, polishing, lubrication, rent-car service, vehicle parking, cashiers, attendants, coin box checkers, non-attendant parking lot checkers, parking ticket auditors and other employees performing incidental duties; excluding office clerical employees, guards, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL adhere to the terms of our collective-bargaining agreements with the Union, specifically by paying the contractual wage rates, by making contractually required fringe benefit payments, and by remitting checked-off dues to the Union.

WE WILL, on request, provide the Union with information that is relevant and necessary to its role as bargaining representative of employees in the unit.

WE WILL make the employees in the above unit whole, with interest, for any losses they may have sustained as a result of our failure and refusal to adhere to the terms of our collective-bargaining agreements with the Union. WE WILL remit any payments we owe to fringe benefit funds and reimburse our employees for any expenses resulting from our failure to make the required payments.

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WE WILL remit to the Union all dues that we withheld from the wages of unit employees since August 1, 1990, pursuant to the checkoff provisions of the collective-bargaining agreements, with interest.

AUTO PARK, INC. d/b/a DAILY PARK

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 2201 Broadway, Second Floor, Oakland, California 94612-3017, Telephone 415--273--6122.